S.B.CIVIL MISC. APPEAL NO.1219/2006

Madhya Pradesh State Road Transport Corporation and anr.

Vs.

Shri Dilip and anr.

DATED : 29.08.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.S.Bhati for the appellant

Having heard learned counsel for the appellant and having perused the impugned award, this Court is satisfied that this appeal remains absolutely bereft of substance and deserve to be dismissed without being admitted.

The accident in question occurred on 13.05.1999 at 12.15 p.m. near village Chhoti Sarvan on Ambapura to Danpur Road when a Jeep bearing registration No.MP 14/A-7461 was hit by an oncoming bus bearing registration No. MP 7/F-0352 belonging to the appellant Madhya Pradesh State Road Transport Corporation and driven by the non-applicant No.1 Ishaq Mohammed. The claimant Dilip occupying the said jeep sustained injuries and submitted the claim application claiming compensation for the loss suffered due to the accident against the owners and driver of the offending bus. The non-applicants

contested the claim application, inter alia, on the submissions that the accident occurred due to the negligence of the jeep driver only and there was no negligence on the part of the bus driver. The learned Tribunal framed necessary issues and in evidence the claimant apart from producing relevant documentary evidence examined himself as AW-1 and Dr. Sudhindra Kumar Bhatnagar as AW-2. No evidence was led on behalf of the non-applicants.

The Tribunal has proceeded to hold that the accident occurred for the rash negligent driving of the bus by the non-applicant No.1; and has found the claimant to have suffered two grievous injuries including fracture of left humerus bone; and his partial permanent disablement at 20%; and has awarded compensation in the sum of Rs. 50,000/- with interest @ 9% per annum.

This appeal has been submitted by the owners of the bus seeking to question the finding on negligence of the bus driver and so also the quantum of compensation awarded.

The challenge to the finding on negligence of the bus driver and his responsibility towards the accident is absolutely bereft of any basis. The appellants have merely made suggestions of the negligence of the jeep driver; but have not produced any evidence on their part. There appears no reason or justification for the appellants to have not produced the bus

driver in evidence. An adverse inference is required to be drawn against the appellants for non-production of the most material and relevant witness. Moreover, even if it be assumed for the sake of arguments that there was some negligence on the part of the jeep driver too, yet in the context of the injured claimant, an occupant of the jeep, the case would be of composite negligence of both the drivers and he is definitely entitled to recover compensation from the driver and owners of the bus, representing one set of tortfeasors.

So far quantum of compensation is concerned, for the extensive injuries sustained by the claimant and the disability carried by him, total compensation in the sum of Rs. 50,000/- for the injuries, treatment expenditure, loss of income and loss of future earning capacity remains rather on the lower side and cannot be said to be excessive. The Tribunal has of course noticed the fact that no bills of expenditure were produced but looking to the extent of injuries and hospitalization has made a fair estimate awarding Rs. 5,000/- towards treatment and dietary expenditure and transportation; another Rs. 5,000/- awarded towards loss of income during the treatment period; Rs. 20000/- towards injuries, pain & sufferings and another Rs. 20,000/- towards 20% permanent disablement. The Tribunal has awarded interest @ 9% per annum; but in the award made in the year 2004 and looking to the quantum of

compensation, such rate of interest cannot be said to be so excessive as to warrant interference in appeal.

In its totality, the award in question cannot be said to be excessive and does not warrant interference in this appeal by the owner of the offending vehicle. Therefore, there appears no reasonable ground to admit this appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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